were requested to be translated by the learned magistrate were those appearing on the documents tendered and admitted as exhibits by the court. The learned counsel argued that there must be proper translation by the court interpreter. He cited the cases of *Ang Chvee Keong* v. *R.*,[3] and *Woo Chin Chong & Ors.* v. *Public Prosecutor.*[4] From the record, I found that the translation requested by the magistrate related only to certain Chinese characters appearing in some pages of the exhibits, those Chinese characters which the police expert witness was unable to read. After examining the exhibits and after considering the testimony of the police expert witness, I am satisfied that no person acting judicially and properly instructed as to the relevant law could have come to any other conclusion, i.e. that these exhibits related to character lottery. The learned counsel for the appellant contended that the learned magistrate entertained a reasonable doubt when he requested the translation to be made. Having read the grounds of judgment of the learned magistrate, I am unable to agree with this contention. In my opinion, there was, in the circumstances of this particular case, nothing irregular or improper for the magistrate in requesting the interpreter to translate these Chinese characters. I do not however say that such a practice is satisfactory. It is I think desirable that when documents are tendered as exhibits and where the prosecution or the defence wish to rely on these exhibits, they should be properly translated.

In the light of the reasons given above, I would therefore dismiss the appeal against conviction. As regards sentence, the learned magistrate erred, if at all, in failing to consider that the sentence imposed should have some deterrent effect. Though the fine imposed, I think, was in the circumstances not quite adequate, I do not propose to interfere with it. Appeal against sentence is dismissed.

Appeal dismissed.

Solicitors: *Joseph & Sons.*

PUBLIC PROSECUTOR v. MA'ARIF

[A.Cr.J. (Abdul Hamid J.) March 24, 1969]
[Seremban — Criminal Appeal No. 29 of 1968]

Criminal Law and Procedure — Appeal — Fact, question of — Appeal on ground of decision against weight of evidence — Principles applicable.

A magistrate's decision should not be reversed on the ground of its being against the weight of evidence; however, there is no reason why this should not be done if it were found that the decision was grossly against the weight of the evidence.

Case referred to:—

(1) *In re A.B. Ltd.* [1956] M.L.J. 197.

MAGISTRATE'S CRIMINAL APPEAL.

R. Padmanabhan (Deputy Public Prosecutor) for the appellant.

K. D'Cruz for the respondent.

Cur. Adv. Vult.

Abdul Hamid J.: This is an appeal by the public prosecutor against the decision of the learned president of the sessions court acquitting the respondent on a charge under section 4(c) of the Prevention of Corruption Act, 1961. The charge reads as follows:—

"That you on 10th February, 1968 at the Public Works Department Office, Kuala Pilah, in the District of Kuala Pilah, in the State of Negri Sembilan, being an agent of the Government of Negri Sembilan, to wit, a junior technician (Road) knowingly used with intent to deceive your principal a document, to wit, Check Roll No. 4 issued on 9th January, 1968 being Check and Pay Roll of labour employed under Jurutera Kerja, Kuala Pilah in respect of wages and overtime pay in respect of which your principal is interested, and which document contains a statement which is false in material particular namely it stated that overtime work had been performed which statement to your knowledge was intended to mislead your principal and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961."

Briefly, the facts of this case were that the respondent was a junior road technician attached to the Public Work Department Office, Kuala Pilah. The respondent had under his control four gangs of labourers. The respondent's duties were to muster the gangs everyday and to give them their work. Normal working hours will be from 6.30 a.m. to 2.30 p.m. and work after 2.30 p.m. will be charged overtime. For overtime work, prior approval of the technical assistant should be obtained and transmitted to the executive engineer, unless there was an emergency in which case the respondent could authorise the work. There was in this case no prior approval given.

The respondent was also responsible for entering the check rolls daily and to complete it by the end of the month for payment.

On or about 10th February, 1968, the respondent submitted Exhibit P.4 the check roll containing claims for overtime as regards the gang of labourers under his charge. The check roll contained claims for overtime of some of the labourers who did not in fact perform the overtime as claimed.

The appellant raised a number of grounds mainly on questions of fact. The learned president in his grounds of judgment dealt with the evidence of P.W.1 who stated that he saw the respondent writing on the check roll. The president came to the conclusion that the cir-

cumstances under which P.W.1 claimed to have seen the respondent writing on the check roll were such that it was impossible for P.W.1 to see what the accused was writing.

The learned president further found (a) that Exhibit P.4 had not been proved to be the actual check roll on which the accused was alleged to have written; (b) that someone other than the accused could have falsely made the entry — there was evidence that anyone in the office could have access to all the documents; (c) that other prosecution witnesses were quite formal and in no way implicated the accused, and (d) that P.W.8 Ibrahim bin Bulat was an accomplice.

The case evolved purely on a question of fact and, bearing in mind that 'An appeal is merely a continuation of a trial, and throws open all the evidence to re-examination in order to determine whether or not the various findings of the court are correct," I found it necessary in this case to review the whole of the evidence adduced by the prosecution. It is true that a magistrate's decision should not be reversed on the ground of its being against the weight of evidence. However, there is no reason why it should not be done if it were found that the decision was grossly against the weight of the evidence. It is perhaps appropriate to refer to a passage in *Mallal's* Criminal Procedure, 4th edition, page 467, which states that:—

> "There is a distinction between the finding of a specific fact and a finding of fact which is really an inference drawn from facts specifically found. In the case of the latter the appellate court will more readily form an independent opinion than in the case of the former which involve the evaluation of the evidence of the witnesses, particularly where the finding could be founded on their credibility or bearing",

and

> "An appellate court may allow an appeal from a determination on a question of fact if it appears to the court that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal." (*In re A.B. Ltd.*[1]).

The president arrived at his findings mainly on a finding of fact inferred from facts specifically found. It seems to me that the learned president was wrong when he rejected the evidence of P.W.1 holding that it was impossible for this witness to see the respondent writing. The witness said that he saw. The president on holding that it was impossible for the witness to see did not, in my view, infer from any material fact specifically found. The learned president also failed to consider the evidence of other witnesses who saw the respondent writing, though P.W.1 did not actually see what he wrote at the place and on the date and time in question. After reviewing the evidence of other prosecution witnesses, in particular P.W.7 and P.W.8, I find that the learned president could not, if he had considered properly the evidence of these witnesses, have come to the conclusion that he did. The learned president also erred in his finding of fact that Exhibit P.4 had not been proved to be the actual check roll on which the respondent was alleged to have written. This finding was grossly against the weight of the evidence. There was abundance of evidence for the learned president to infer from the facts adduced by the prosecution that the exhibit in question was in fact under the control of the respondent and the one on which he made the entries regarding the overtime. Apart from the fact that the respondent was personally responsible not only for the charge and control of the gang of labourers but also for keeping a record of the working hours he (the respondent) was also responsible for the submission of the check roll for work done.

The learned president's finding that someone other than the respondent could have falsely made the entries, there being evidence that anyone in the office could have access to all the documents, was not, in my view, based on any material fact. Though there was a possibility of anyone doing it, it could not under the circumstances have been said to be probable. In this case the learned president did not even consider that there was this probability. He merely arrived at the finding that anyone could have had the opportunity to do it. In my opinion, there was no evidence on which the learned president could arrive at the finding that he did.

The learned president was also wrong in holding that the other prosecution witnesses were mere formal witnesses. On a review of the evidence, I am satisfied that P.W.7 and P.W.11 were material witnesses whose evidence should have been carefully considered by the learned president, and not merely treated as formal witnesses.

In the circumstances, I am of the opinion that on the evidence adduced as a whole, a person acting judicially and properly instructed as to the relevant law could not have come to the conclusion that the learned president did. I would, therefore, allow the appeal and set aside the order for acquittal. Since the learned president has now left the service, I think it is only proper that a re-trial be ordered. I accordingly order the case be reverted back to the lower court for the respondent to be re-tried.

Re-trial ordered.

Solicitors: *Joseph & Son.*